

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MARSHA LINEHAN, an individual,

Plaintiff,

v.

LANE PEDERSON, an individual, and
COGNITIVE AND BEHAVIORAL
SPECIALTIES d/b/a DIALECTICAL
BEHAVIOR THERAPY NATIONAL
CERTIFICATION AND ACCREDITATION
ASSOCIATION, a Minnesota non-profit
corporation,

Defendants.

NO. 2:17-CV-01494

**COMPLAINT FOR TRADEMARK
INFRINGEMENT, FALSE DESIGNATION
OF ORIGIN, FALSE ENDORSEMENT
AND UNFAIR COMPETITION**

JURY TRIAL DEMANDED

NATURE OF ACTION

This is an action for trademark infringement, false designation of origin, false endorsement, and violation of the Washington Consumer Protection Act, arising from (1) Defendants' unauthorized use of the trademarks DIALECTICAL BEHAVIOR THERAPY and DBT, a cognitive behavioral treatment created and used by the Plaintiff in association with educational, research and development, and therapy services; and (2) Defendants' unauthorized

COMPLAINT - 1

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 Second Avenue, Suite 500
Seattle, Washington 98104-2323
office 206 587 0700 fax 206 587 2308

1 use of Plaintiff's name to develop and promote their own profile and competing business
2 interests.

3 **PARTIES**

4 1. Plaintiff Marsha Linehan is an individual and a resident of Washington.

5 2. Defendant Lane Pederson ("Defendant Pederson") is an individual and a resident
6 of Minnesota. Defendant Pederson, on information and belief, does business as Lane Pederson
7 & Associates, LLC, a Minnesota limited liability company located in Edina, Minnesota.

8 3. Defendant Cognitive and Behavioral Specialties d/b/a Dialectical Behavior
9 Therapy National Certification and Accreditation Association ("CBS"), a non-profit corporation
10 founded by Defendant Pederson and headquartered in Edina, Minnesota.

11 4. Defendant Pederson and CBS are collectively referred to as "Defendants."

12 **JURISDICTION AND VENUE**

13 5. This Court has subject matter jurisdiction over the claims alleged herein pursuant
14 to 28 U.S.C. § 1331 (federal question) and § 1338(a) (trademark claim), and subject matter
15 jurisdiction over the state law claims pursuant to 28 U.S.C. § 1338(b) (related unfair competition
16 claims) and § 1367 (supplemental jurisdiction).

17 6. This Court has personal jurisdiction over Defendants, who have minimum
18 contacts with this State and District, by conducting business, selling goods and services and
19 causing injury in this State and District. Defendants have purposefully availed themselves of the
20 jurisdiction of the federal district court in the Western District of Washington at Seattle by
21 promoting, distributing and offering the infringing goods and services and materials to persons
22 within this State and the Western District.

23 7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1)–(2) and
24 28 U.S.C. § 1391(c)(2).

FACTS

A. Dr. Linehan Created a New Treatment for Suicidal Patients in the 1970s, Coined the Term Dialectical Behavior Therapy, and Devoted Her Life to Development of the DBT Treatment and the Training of Therapists in the DBT Treatment Over the Last 40 Years

8. Dr. Linehan earned her Ph.D. in Psychology from Loyola University (Chicago) in 1971. She is and has been a professor of psychology at the University of Washington since 1977. Currently, she is the Director of the University's Behavioral Research & Therapy Clinics, where she leads research and further development of the DBT treatment.

9. Dr. Linehan created the treatment and coined the term Dialectical Behavior Therapy (or DBT) in the late 1970s. DBT was created to treat individuals with a high risk of suicide.

10. Dr. Linehan founded Behavioral Tech, LLC, which trains practitioners in the DBT treatment. Dr. Linehan founded and is President Emeritus of the DBT-Linehan Board of Certification, which certifies practitioners and clinical programs in the DBT treatment.

11. For over 40 years, Dr. Linehan has been educating students in the DBT treatment, training practitioners in use of the DBT treatment, and leading research and development of the DBT treatment. She founded and is leading organizations that train and certify practitioners and programs in the DBT treatment. For decades, she has published, produced, or presented dozens of books, manuals, video and audio programs, journal articles, lectures and workshops on the DBT Treatment. She is well-known and widely recognized throughout the community of psychologists as the creator and foremost expert on the DBT treatment and has received multiple awards for her groundbreaking work in treatment of persons with high risk of suicide.

B. Dr. Linehan Owns the Trademarks Dialectical Behavior Therapy and DBT

12. In 2010, Dr. Linehan filed a federal trademark application, Serial No. 85/161464, for DBT as a trademark based on her use of the term with educational services, research and

1 development services, and psychotherapy services. In 2012, the US Patent & Trademark Office
 2 (the “USPTO”) granted a registration for DBT, US Registration No. 4204315.

3 13. In 2015, Dr. Linehan filed a trademark application, Serial No. 86/539349, for
 4 DIALECTICAL BEHAVIOR THERAPY based on her use of the mark with educational
 5 services.

6 14. “Dialectical Behavior Therapy” and “DBT” are distinctive of Dr. Linehan’s
 7 educational, research and development, and therapy services related to treatment of individuals
 8 with a high risk of suicide. She is the authority on the use and development of the treatment she
 9 created more than 40 years ago. The practitioners that receive her education and training, assist
 10 in her development and research, and seek training and certification for therapy services in the
 11 DBT treatment, immediately recognize DBT and DIALECTICAL BEHAVIOR THERAPY as
 12 originating from and relating to Dr. Linehan. Within the field of psychology, Dr. Linehan and
 13 DBT are famous due specifically to the widespread recognition of her work and her
 14 groundbreaking treatment.

15 **C. Defendant Pederson’s Use of Dr. Linehan’s Name and the Goodwill Associated With**
 16 **Her DBT and DIALECTICAL BEHAVIOR Trademarks To Promote His**
 17 **Professional Profile and Business Interests**

18 15. Defendant Pederson has never studied with, taken a class taught by, trained with,
 19 or been certified by Dr. Linehan in her DBT treatment. Despite this fact, Defendant Pederson
 20 holds himself out as a self-anointed authority on DBT treatment. He has written at least three
 21 books since 2012 on the DBT treatment. He offers consultation and training on the DBT
 22 treatment through Lane Pederson & Associates, LLC and other business interests. He regularly
 23 offers presentations and conferences focusing on the DBT treatment, which he markets and
 24 promotes throughout the country, including Washington.

25 16. Defendant Pederson formed CBS in 2010 to offer a certificate program for
 26 practitioners in the DBT treatment. Since at least 2011, Defendants have promoted and offered
 certificates under the logo shown below (the “Infringing Logo”) and the acronym “DBTNCAA”

1 to practitioners throughout the United States, including a number of practitioners licensed and
2 doing business in Washington state.

3 17. In 2010, knowing of Dr. Linehan's creation of the DBT treatment in the 1970s,



8 her books and trainings, her teachings and presentations related to the DBT treatment for more
9 than 20 years, and her ongoing use of DBT and DIALECTICAL BEHAVIOR THERAPY,
10 Defendant Pederson filed trademark applications through his CBS organization claiming the
11 exclusive right to use DBTNCAA (Serial No. 85/047643) and the Infringing Logo (Serial No.
12 85/047628) for certification services related to the DBT treatment.

13 18. In preparing and submitting the federal trademark applications for the DBTNCAA
14 mark and the Infringing Logo, Defendant Pederson, through counsel, declared, under penalty of
15 perjury, *inter alia*, that no other person had a right to use either mark or a confusingly similar
16 mark.

17 19. Only because the USPTO required a disclaimer of DIALECTICAL BEHAVIOR
18 THERAPY in examining the application for the Infringing Logo did Defendant Pederson and
19 CBS agree to disclaim the exclusive right to use that phrase with its certification services.

20 20. In reliance upon the foregoing declarations, the USPTO issued registrations for
21 the Infringing Logo and the DBTNCAA mark in 2012.

22 21. Defendants and Defendant Pederson's other businesses, instituted proceedings at
23 the USPTO to oppose and seek cancellation of Dr. Linehan's DIALECTICAL BEHAVIOR
24 THERAPY and DBT trademarks. Dr. Linehan counterclaimed seeking to cancel the trademark
25 registrations for the DBTNCAA mark and the Infringing Logo.
26

1 22. Through CBS, Defendant Pederson uses and has used the DBTNCAA mark and
2 the Infringing Logo in interstate commerce, including in the state of Washington, by offering,
3 promoting and marketing his services of offering certificates in DBT treatment.

4 23. In his profession as a therapist, as an author and speaker, and in training other
5 practitioners, Defendant Pederson consistently uses Dr. Linehan's name and the trademark DBT.

6 24. As of September 2017, the requirements for candidates to receive a DBTNCAA-
7 branded certificate from Defendant Pederson's CBS included attestation that they had read two
8 books authored by Dr. Linehan. None of the books authored by Defendant Pederson are required
9 texts to receive a certificate from CBS.

10 25. Defendant Pederson, personally and through his business interests, has
11 acknowledged Dr. Linehan's creation of the DBT treatment, and expressed gratitude to Dr.
12 Linehan for her contributions to psychology. In at least one book authored by Defendant
13 Pederson, he stated that Dr. Linehan's work "is the genesis" of his work, and without Dr.
14 Linehan "I would only be me."

15 26. Defendants use Dr. Linehan's name and a quote attributed to her, without her
16 prior knowledge or permission, on at least two brochures promoting Defendant Pederson's
17 appearance as a "DBT Expert" at Defendant Pederson's "DBT Conference" in 2016 and 2017.
18 These brochures prominently feature Dr. Linehan's name in close proximity to an image of
19 Defendant Pederson. The brochures also prominently feature both the DIALECTICAL
20 BEHAVIOR THERAPY and DBT marks, as well as the Infringing Logo and the DBTNCAA
21 mark.

22 27. Defendants also use Dr. Linehan's name on these brochures to market and
23 promote the CBS business. Registration for the conference includes a free membership in the
24 DBTNCAA program, which is a requirement to receive a DBTNCAA-branded certificate from
25 CBS. Dr. Linehan did not have prior knowledge of the use of her name to sell memberships to an
26

1 organization that competes with her DBT-LBC certification and accreditation organization, and
2 certainly did not authorize it.

3 28. Defendant Pederson also uses Dr. Linehan's name on these brochures to market
4 and promote his other business interests. The registration form on the brochure includes
5 advertisements for books authored by Defendant Pederson. His biographical information, printed
6 directly above Dr. Linehan's name and the quote attributed to her, includes promotional
7 language about his business, Mental Health Systems, PC, and a link to the website www.mhs-
8 dbt.com, which also uses Dr. Linehan's name as the creator of the DBT treatment.

9 29. Practitioners seeking education, training or certification in the DBT treatment are
10 likely to encounter Defendant Pederson's professional practice and his businesses offering,
11 promoting, and marketing their services under the DBTNCAA mark, the Infringing Logo, the
12 DBT mark, the DIALECTICAL BEHAVIOR THERAPY mark, and Dr. Linehan's name, under
13 circumstances that are likely to result in confusion. The use of these marks, symbols, and Dr.
14 Linehan's name are likely to result in the mistaken belief that Dr. Linehan is affiliated,
15 connected, or associated with Defendant Pederson and his businesses or that Dr. Linehan is the
16 source of, or otherwise sponsors or approves of their services.

17 **FIRST CAUSE OF ACTION**

18 **Trademark Infringement and False Designation of Origin Pursuant to 15 U.S.C. 1125(a)**

19 30. Plaintiff incorporates by reference the allegations in the above paragraphs, as
20 though fully set forth herein.

21 31. Plaintiff owns the trademarks DBT and DIALECTICAL BEHAVIOR THERAPY
22 (the "Trademarks") for use with educational, research and development, and therapy services
23 ("Linehan Services").

24 32. Defendants have and are using Trademarks, the DBTNCAA mark and the
25 Infringing Logo in commerce for training, educational, therapy and certification services.
26

1 33. Given Dr. Linehan's use of the Trademarks since long before any date upon
2 which the Defendants can rely for purposes of priority, she has rights in the Trademarks that are
3 senior to any rights of the Defendants in any confusingly similar marks, including the
4 DBTNCAA mark and the Infringing Logo.

5 34. Defendant has consistently used the Trademarks, the DBTNCAA mark and the
6 Infringing Logo without authorization from Plaintiff, resulting in or likely to cause the mistaken
7 belief, confusion or mistake that the services offered by Defendants are affiliated, connected,
8 sponsored, approved or otherwise associated with Dr. Linehan and her work resulting in
9 substantial and irreparable harm to Plaintiff and the goodwill associated with the Trademarks.

10 35. Plaintiff is entitled to damages and injunctive relief for Defendants' unauthorized
11 use of the Trademarks, the DBTNCAA mark, the Infringing Logo, and false designation of
12 origin in an amount to be determined at trial.

13 **SECOND CAUSE OF ACTION**

14 **False Endorsement Pursuant to 15 U.S.C. 1125(a)**

15 36. Plaintiff incorporates by reference the allegations in the above paragraphs, as
16 though fully set forth herein.

17 37. Dr. Linehan is well known and widely recognized as the creator and foremost
18 expert in the DBT treatment within the field of psychology, which is the segment of the society
19 for whom Defendants' services are intended.

20 38. Defendants have used and continue to use Dr. Linehan's name in association with
21 services that are directly competitive with or related to Dr. Linehan's services for which she is
22 well-known and widely recognized within the field of psychology in a manner that falsely
23 implies that Dr. Linehan endorses or approves of Defendants' services.

24 39. This unauthorized use of Dr. Linehan's name is an intentional effort by the
25 Defendants to capitalize on Dr. Linehan's fame and success within the field of psychology.
26

1 40. Defendants' use of Dr. Linehan's name without authorization has resulted in or is
2 likely to cause the mistaken belief, confusion or actual mistake that the services offered by
3 Defendants are affiliated, connected, sponsored, approved or otherwise associated with Dr.
4 Linehan and her work resulting in substantial and irreparable harm to Plaintiff.

5 41. Plaintiff is entitled to damages and injunctive relief arising from Defendants' false
6 endorsement in an amount to be determined at trial.

7 **THIRD CAUSE OF ACTION**

8 **Violation of the Washington Consumer Protection Act, RCW 19.86.020, et. seq.**

9 42. Plaintiff incorporates by reference the allegations in the above paragraphs, as
10 though fully set forth herein.

11 43. Defendants' activities, as alleged above, constitute unfair methods of competition
12 and unfair or deceptive acts or practices in the conduct of trade or commerce, in violation of
13 RCW 19.86.020, et. seq.

14 44. Defendants' conduct has affected and is contrary to the public interest, has tended
15 to mislead a substantial portion of the public as to the source, origin, endorsement or approval of
16 Defendants' services, and will continue to injure Dr. Linehan in her business and property in the
17 State of Washington.

18 45. Dr. Linehan been and will continue to be damaged and Defendants have been
19 unjustly enriched by such acts in an amount to be proved at trial.

20 **JURY DEMAND**

21 Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury of all issues so
22 triable that are raised herein or which hereinafter may be raised in this action.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for relief as follows:
25
26

48. For an accounting of all of Defendants' receipts and disbursements, profit and loss statements and other financial materials, statements and books relating to Defendants' infringing activities;

50. For an award of pre-judgment and post-judgment interest at the maximum rate allowed by law;

52. For such other and further relief as the Court may deem just and proper.

CAIRNCROSS & HEMPELMANN, P.S.

Attorneys for Plaintiff

{03415458.DOCX;1 }

/s/ Jeff Nelson

Jeff Nelson WSBA No. 44570

E-mail: jnelson@cairncross.com

524 Second Avenue, Suite 500

Seattle, WA 98104-2323

Telephone: (206) 587-0700

Facsimile: (206) 587-2308

Attorneys for Plaintiff

/s/ Binah B. Yeung

Binah B. Yeung WSBA No. 44065

E-mail: byeung@cairncross.com

524 Second Avenue, Suite 500

Seattle, WA 98104-2323

Telephone: (206) 587-0700

Facsimile: (206) 587-2308

Attorneys for Plaintiff